

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDWARD T. BOLTON,

Petitioner,

Civil No. 05-393-AA

v.

ORDER

GUY HALL,

Respondent.

AIKEN, District Judge.

Petitioner is in the custody of the Oregon Department of Corrections pursuant to multiple judgments, of which only one is under attack in this proceeding under 28 U.S.C. § 2254: the Judgment of Conviction and Sentence, dated June 6, 2001, from Tillamook County Circuit Court Case No 991065, after a conviction for Escape in the Second Degree. Following a guilty plea, petitioner was sentenced to 30 months' imprisonment, to be served consecutively to previously imposed

sentences. Petitioner did not appeal his conviction or seek post conviction relief.

The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) which became effective on April 14, 1996, amended 28 U.S.C. § 2244 to provide a limitations period for filing a federal habeas corpus petition. Under § 2244(d), a petitioner now has one year from the date a direct appeal is final to file a petition under 28 U.S.C. § 2254. Time elapsed after finality and before collateral filing, and time after the final collateral disposition and before federal filing counts against the year. Nino v. Galaza, 183 F.3d 1003, 1006-7 (9th Cir. 1999).

Petitioner did not appeal the criminal judgment he challenges in this proceeding, but pursuant to ORS 138.071 he had 30 days from the date it was entered to do so. In this case, the criminal judgment was entered on June 6, 2001, meaning that petitioner had until July 6, 2001, to file a notice of appeal.

Petitioner had one year from July 6, 2001, excluding any time during which a state post-conviction case, or other collateral remedy, was pending, to file a federal habeas corpus petition. As noted above, petitioner did not seek state post-conviction relief.

Between July 6, 2001, the latest date on which petitioner

could have directly appealed the criminal judgment, and March 17, the date on which petitioner signed the petition before the court, 1,350 days accrued. Therefor, petitioner did not file his federal habeas petition with the applicable statute of limitations.

Petitioner's Petition (#1) is denied. This proceeding is dismissed.

IT IS SO ORDERED

DATED this 18 day of October, 2005.

/s/ Ann Aiken
Ann Aiken
United States District Judge